



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Sidney Latham
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. O-6203

Re: Whether the federal war
ballots can be legally
tabulated all in one
precinct in each county,
and the total value to
the county total under
Public Law, 277, 78th
Congress.

Your letter of September 8, 1944, requesting the
opinion of this department on the question stated therein
in part, as follows:

"Public Law 277, Seventy-Eighth Congress,
commonly known as the soldier voting act, provides
for the casting of so-called Federal ballots by
servicemen overseas; which ballots, when voted, are
to be returned to the Secretary of State and by
him distributed to the appropriate local election
officials (Sec. 309(b)).

"The outer envelope prescribed by the United
States War Ballot Commission for the return of the
executed ballots contains a space for the residence
address of the voting serviceman, but does not pro-
vide a space to show the voting precinct of the
voter.

"It is the intention of this office to distrib-
ute such ballots to the proper county clerks; but it
will be extremely difficult, especially in the larger
counties, for the county clerks to make distribution
of these ballots to the proper precinct officials.
Such envelopes are not to be opened by any person
other than the local election officials.

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"The Federal ballots will be cast only for candidates for president and congressmen, there being no United States senator to be elected in Texas this year.

"In the light of the above facts, will you please advise this department upon the following inquiry:

'1. Can the Federal War Ballots be legally tabulated all in one precinct in each county, and the totals added to the county total in order to save the confusion of the county clerks in undertaking to distribute them to the various precincts without sufficient identification on the envelopes?'"

Public Law, 277, 78th Congress, commonly known as the soldier voting act, among other things, prescribes the oath of electors in the general election, the forms to be printed on each envelope, the form of ballot, etc. Paragraph B, of Section 309, of Title 3, supra, provides:

"The Secretary of State of any State, upon receiving any ballot cast under this title, shall, at an appropriate time, transmit it to the appropriate election officials of the district, precinct, county or other voting unit of the voters' residence. Such officials shall take oath that they will not disclose to anyone (unless required by law) how any absentee shall have voted. Such official shall determine, that the oath required under sections 303 and 304, has been executed and that it is an order, pursuant to Section 311, to open the official inner envelope; whereupon, such officials shall compile a voting list of the names appearing on all such inner envelopes received from the Secretary of State. No person other than such appropriate election official shall open any official outer or inner envelope purporting to contain a ballot cast under this title."

Paragraph B, of Section 310, Title 3, supra, provides:

"Each Secretary of State shall prepare a report of all ballots received by him and transmit it to the various election officials, and within thirty days after the last day for counting absentee ballots in any election in which ballots are cast under the provisions of this Title, each Secretary of State shall transmit such report to the Commission."

Article 2936, V. A. C. S., provides:

"All voters shall vote in the election precinct in which they reside."

Article 2956, V. A. C. S., pertaining to absentee voting, provides, in part:

"... Upon receipt of any such ballot, the clerk shall keep the same unopened until the second day prior to such election, and shall then enclose same together with the elector's application and accompanying papers, in a larger carrier envelope which shall be securely sealed and endorsed with the name and official title of such clerk, and the words 'this envelope contains an absentee ballot and must be opened only at the polls on election day,' and the clerk shall forthwith mail same, or deliver in person, to the presiding judge of the election, or to any assistant judge of election in said precinct."

There is no appellate court decision that we are able to find passing upon the question involved in this opinion. Considering Public Law 277, supra, together with the foregoing Texas statutes, it is our opinion that the Federal War Ballots cannot be legally tabulated all in one precinct in each county. Stated in another way, the Federal War Ballots should be tabulated in the precinct where the voter has his legal residence and is entitled to vote.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams,
Assistant.

